

LETTER OPINION
80-6

May 29, 1980 (OPINION)

Mr. Albert J. Hardy
Stark County State's Attorney
P. O. Box 370
Dickinson, North Dakota 58601

Dear Mr. Hardy:

This is in response to your letter of April 29, 1980, wherein you request an opinion of this office relative to section 14-08-07 of the North Dakota Century Code, as amended. You submit the following facts and inquiry in your letter:

The Clerk of our District Court has requested that I obtain an Attorney General's Opinion from your office concerning alimony payable to her office under the provisions of section 14-08-07 of the North Dakota Century Code.

The Clerk presently is receiving alimony payments only pursuant to court decrees in several divorce actions. The decrees in question did not involve child support or alimony combined with child support as prescribed in the above-quoted section.

Section 14-08-07 of the North Dakota Century Code requires that courts in decrees for child support or alimony combined with child support provide that payments be made to the Clerk of Court. The statute goes on to provide:

"Whenever there is a failure to make the payments as required, the Clerk of Court shall send notice of the arrears by registered or certified mail to be delivered only to such person ordered to make the support or alimony payments." (Emphasis added).

The question upon which we would like your opinion is whether the Clerk, in situations where there are provisions for alimony payments only, must send out the notice of arrears.

The question undoubtedly arises due to the initial reference in the application, i.e., "payments for child support or alimony combined with child support," and whether such wording applies only to alimony that is combined with "child support." We are inclined to the position that it applies only as specified in the statute, i.e., "payments for child support or alimony combined with child support" (emphasis supplied). We can find no other statutory reference which would modify the application other than the statute itself and while we could speculate as to a possible theory or reason to substantiate a theory that alimony should be entitled to the same degree of benefit as alimony combined with child support, both having the foundation of their authority in an order of or decree of the court, we cannot support such a position as a matter of statutory law. Accordingly, it would appear that if the court orders that alimony payments be made to the clerk of court, unless the order or decree

specifically provides, there would be no statutory requirement that the clerk send out the notice of arrears required by section 14-08-07. Since section 14-08-07 does not apply in strictly alimony situations, there would appear to be no requirement for the clerk to send out the notice prescribed thereunder unless the court in its order directed the clerk to do so, in which instance the sending of notice would be pursuant to the court's direction rather than the statute.

We trust that the foregoing observations and comments will adequately set forth our opinion on the matter submitted and that the same will be sufficient for your purposes.

Sincerely,

ALLEN I. OLSON

Attorney General